

INSTRUCTIONS FOR APPEALS TO THE
NORTH HAMPTON ZONING BOARD OF ADJUSTMENT

IMPORTANT: READ CAREFULLY BEFORE FILLING OUT THE APPLICATION FOR RELIEF.

Preface: The North Hampton Zoning Board of Adjustment strongly recommends that prior to requesting an appeal you familiarize yourself with our Zoning Ordinances, and also with the New Hampshire Statutes, especially, RSAs 672-677, which address planning and zoning. You may review or purchase a copy of the Zoning Ordinance at the Town Offices. All forms and the Zoning Ordinance are available online at:

www.northhampton-nh.gov/Public_Documents/NorthHamptonNH_PZDept/index

Burden of Proof: *In order for an appeal to be granted, it is the responsibility of the applicant to satisfy each of the requirements set forth or to persuasively show why the appeal should be granted.*

1. General Provisions:

a. Completed Applications. Applications must be submitted before 2:00 pm on the scheduled deadline date to the Planning & Zoning Administrator. Applications must be received a minimum of 25 full calendar days prior to the Public Hearing at which the Applicant shall be heard. Since an Applicant has a statutory right to a hearing within thirty (30) days of an accepted Application, an Applicant must inform the Zoning Administrator whether or not the Scheduled Hearing date is acceptable to the Applicant.

b. Fees: Completed applications must be submitted with a \$210.00 application fee (includes \$125 for filing and public noticing, \$50 for review, and \$35 for recording), plus Abutter Fees of \$10.00 per abutter to be notified. Filing fees are non-refundable, except recording fees may be refunded if the Application is withdrawn, or there is no Decision Letter to be recorded (use Form 1 to request a refund). All fees should be made payable to the Town of North Hampton.

c. List of Abutters: It is the primary responsibility of the Applicant to identify all abutters to whom notice is to be given. The Conservation Commission is required as an abutter on all -variance applications for wetlands setbacks. By submission of this Application, the signer certifies that the list of abutters is accurate, correct and complete and includes holders of any Conservation or Development easements of record. Three (3) lists of abutters shall be submitted on typed or computer generated (Avery 5160 preferred) labels.

d. Site Plan: Thirteen (13) copies of a Site Plan showing, at a minimum, lot lines, existing structures, septic system and leach field, well, setbacks, size of property, frontage, and other pertinent information, including, but not limited to, conservation easements, Current Use enrollment, and any other restrictions or encumbrances of record.

e. Wetland Setback Variances. In addition to, or added to, the site plan requirements noted above, there shall be a requirement for all variance applications involving wetland setbacks:

1. A current, defined as within three (3) years of the date of the application, plot plan showing delineation of all wetlands, by type, and annotated with several random soil samplings/soil types by an expert qualified in the business.
2. The plot plan should show, or document, the distance to the nearest Stratified Drift Aquifer (greater than 1000 SF per day) as shown and described on the Rockingham County Planning

Commission chart (the North Hampton Conservation Commission and Planning Board should be able to assist in this requirement); and,

3. The plot plan shall show, or document, proximity to The Wetlands Conservation District as defined by Town Zoning Ordinance 409.3 (the North Hampton Conservation Commission and Planning Board should be able to assist in this requirement).

4. These requirements may be waived by special application to the Board (use separate Form 1). Be advised that denial may delay application consideration.

f. Public Hearing: Meetings are scheduled according to the North Hampton Zoning Board of Adjustment Rules of Procedure. The Applicant or the Applicant's designee must be present.

g. Required Signature(s): This Application must be either signed by the Owner of the Property, or accompanied by the written authorization or statement of the Owner of the Property, if an Agent/Designee of Owner is filing the Application.

h. Prior Board Activity: Disclose in writing and attach hereto, the date(s) of all previous actions taken, relief granted/denied by this Board regarding the subject parcel.

i. Sworn Testimony/Accuracy of Information: By submission of this Application, the signer certifies that all information filed is accurate, correct and complete.

INACCURATE OR INCOMPLETE EVIDENCE OR TESTIMONY MAY BE USED AS REASON BY THE BOARD TO DENY OR DEFER ACTION ON AN APPLICATION. ALL TESTIMONY WILL BE RECEIVED UNDER OATH PURSUANT TO NH RSA 673:15.

j. Permission to Inspect: By submission of this Application, the signer hereby grant(s) permission to any Board Member or Alternate, and/or a designated representative, including, but not limited to, the Building Inspector, from time to time, to enter upon the premises subject to the Application, to inspect, "site walk," or otherwise take notice of its characteristics and conditions.

k. Conservation Commission: The North Hampton Conservation Commission may review your application and provide comments or recommendations to the ZBA; it is your responsibility to inform yourself of Conservation Commission activity, as you will receive no separate notification of Conservation Commission review. The Conservation Commission meets the 2nd Tuesday of each month at the Town Hall unless otherwise noticed.

l. Incomplete/Inadequate Applications: Any petitioner/applicant who submits plans or exhibits deemed inadequate or requiring more detailed information may have their application/petition tabled until such time as adequate plans or exhibits are received by the Board.

m. Questions: A list of application deadline dates and any questions can be directed to the Planning and Zoning Administrator at (603) 964-8650.

2. Complete Form 1 – Application.

3. Types of Appeals. In addition to filing Form 1, Application for Relief, there are five (5) primary types of appeals that can be made to the Board of Adjustment:

A. Appeal from an Administrative Decision -- Use Form 2 - PETITION FOR ADMINISTRATIVE APPEAL (file with Form 1):

If you have been denied a building permit or are affected by some other decision regarding the administration of the North Hampton Zoning Ordinance, including a decision of the Planning Board, and you believe that the decision was made in error under the provision(s) of the ordinance, provided such appeal is permitted by statute, you may appeal the decision to the Zoning Board of Adjustment within 30 calendar days from the date of the order from which the appeal is taken (see Rules of Procedure, Section 6A, for specific rules on timeliness).

If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

B. Variance -- Form 3 - PETITION FOR VARIANCE (file with Form 1:

A variance is an authorization, which may be granted under unique circumstances to use your property in a way that is not permitted under the strict terms of the North Hampton Zoning Ordinance. The Board shall hear and decide applications for variance from the terms of the Ordinance if (see RSA 674:33):

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.
 - b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.¹

¹ The Legislature's Statement of Intent: The intent of ... this act is to eliminate the separate "unnecessary hardship" standard for "area" variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by

The applicant has the burden of proof. Applicants should be prepared to present information pertinent to the variance being requested. To obtain a legally granted variance, you must demonstrate/prove that your proposal satisfies ALL five of the variance criteria. (*Note: The applicant may want to review the Board's Form 6, Variance Worksheet, in preparation of a variance application*).

C. Special Exception -- Form 4 - PETITION FOR SPECIAL EXCEPTION (file with Form 1):

1. Certain sections of the North Hampton Zoning Ordinance provide that a particular use of property in a particular zone will be permitted by special exception if specified criteria are met. Per the Board of Adjustment in New Hampshire, a Handbook for Local Officials.

“All special exceptions shall be made in harmony with the general purpose and intent of the Zoning Ordinance and shall be in accordance with the general or specific rules contained in the ordinance. A special exception is a specific, permitted land use that is allowed when clearly defined criteria and conditions contained in the ordinance are met.”

2. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception will be granted only if you can prove that all the criteria specified in the ordinance are met. “If the conditions for a Special Exception are not met, the Board cannot allow it; however, if the conditions are met, the Board must grant the Special Exception.” [See *Shell Oil v. Manchester* 101 NH 76, (1957)].

3. Three questions must be answered to decide whether or not an exception can be legally granted:

- a. Is the use one that is ordinarily prohibited in the district?
- b. Is the use specifically allowed as an exception under the terms of the ordinance?
- c. Are the conditions specified in the ordinance for granting the exception met in the particular case?

4. If you are applying for a special exception, you will likely also need a detailed site plan or subdivision approval, or both from the North Hampton Planning Board.

D. Equitable Waiver of Dimensional Requirements -- Form 5 - PETITION FOR EQUITABLE WAIVER (file with Form 1):

1. Per NHRSA 674:33-a, when a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- a. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially

cases such as *Governor's Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983). SB 147 FN 307:5

completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

b. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

c. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and,

d. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

2. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a non-conforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

E. Other New Hampshire Statute -- Use Form 1 – APPLICATION FOR RELIEF.

This section is to comply with, or request relief from, any statute not otherwise specified above. For example, there are instances in the New Hampshire statutes that may involve the ZBA, such as classification of a private road (see RSA 674:41). Also, there may be a request for waiver of Board rules, required application data, and/or refund of recording fees. All of these requests will use Form 1.